

COUNCIL

Agenda # \_\_\_\_\_

MEETING OF March 23, 2004



## **STAFF REPORT**

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### **RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BELMONT GRANTING COMCAST OF CALIFORNIA IX, INC. A FRANCHISE EXTENSION TO JUNE 30, 2004**

March 23, 2004

Mayor and City Council of the City of Belmont

#### **Summary**

Staff recommends Council adoption of the attached Resolution, which will extend the cable television franchise agreement with Comcast, to allow additional time for negotiations.

#### **Background and Discussion**

On February 12, 1991, the Belmont City Council approved a Cable TV Franchise Agreement with TCI for a period of 12 years. Although negotiations have been ongoing for a franchise renewal agreement, proposed terms for a new agreement were not agreed upon prior to the expiration date of the Franchise Agreement. On December 9, 2003, the City Council adopted a resolution granting an extension to Comcast to operate the cable TV system in the City of Belmont until March 31, 2004. It was anticipated that proposed franchise terms would be agreed upon by March 31, 2004, but it is now apparent that agreement will not be reached by that date. An additional three month extension of the Franchise Agreement is now proposed.

In negotiation for renewal, Belmont has worked with its partners in SAMCAT on a group franchise renewal process. This process has included a technical audit, legal review and community needs assessment of Cable TV services and needs in Belmont.

Working with SAMCAT is beneficial to Belmont since it enables SAMCAT members to share the cost of hiring contract legal and technical assistance at a fraction of the full cost. The City and Comcast pursuant to 47 U.S.C. §546(h), are conducting franchise renewal negotiations informally in an attempt to reach a mutually acceptable franchise agreement.

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The City and Comcast are interested in continuing informal discussions and negotiations regarding franchise renewal and desire to further extend the current franchise term. The process has been moving along but it has taken longer than expected due to the earlier need to review and ultimately come to a negotiated settlement on the recent AT&T/Comcast merger and transfer of operations.

#### **Additional Cable TV Franchise Extension**

Each of the 8 agencies in SAMCAT has prepared a needs assessment which addresses unique local needs and interests with respect to PEG access programming, institutional services and related matters. Rather than attempt to incorporate these unique issues into eight (8) different documents, Brian Grogan, Special Counsel to SAMCAT, focused on creating a Model Franchise with provisions common to all 8 agencies. This process will permit Comcast and SAMCAT to efficiently address common franchise issues and thereafter address agency specific issues. On behalf of the 8 agencies, Mr. Grogan submitted to Comcast a draft Model Franchise dated July 3, 2003. It is anticipated that negotiations with Comcast regarding a renewed Franchise will be completed by June 30, 2004.

A proposed City Council resolution is attached which would grant another franchise extension allowing ample time for franchise negotiations. The attached resolution was developed by Mr. Grogan and has been reviewed and approved as to form by Greg Rubens, the SAMCAT Legal Counsel.

#### **Fiscal Impact**

Comcast will continue to operate per the terms of the original Franchise Agreement during the renewal negotiation period if the City Council approves the attached resolution.

#### **Recommendation**

City Council approval of the additional extension to Comcast until June 30, 2004.

#### **Alternatives**

1. Refer matter back to staff for more information.

#### **Attachments**

1. Resolution

Respectfully submitted,

Valerie Harnish  
Information Services Manager

Jere A. Kersnar  
City Manager

RESOLUTION NO. \_\_\_\_\_

RESOLUTION OF THE CITY COUNCIL  
OF THE CITY OF BELMONT  
GRANTING COMCAST OF CALIFORNIA IX, INC.  
A FRANCHISE EXTENSION TO JUNE 30, 2004

WHEREAS, on or about February 12, 1991, the City of Belmont, California ("City") granted a Cable Television Franchise ("Franchise") to TCI Cablevision of California, Inc., thereafter providing services as AT&T Broadband ("AT&T").

WHEREAS, pursuant to Section 47 U.S.C. §546(a) AT&T provided notification to the City of AT&T's intent to seek renewal of the Franchise under 47 U.S.C. §546(a-g).

WHEREAS, pursuant to Section 47 U.S.C. § (a) the City and AT&T properly commenced franchise renewal proceedings.

WHEREAS, the City adopted Resolution No. 9263 on June 25, 2002 approving the change of control of AT&T to Comcast Corporation.

WHEREAS, the Franchise is currently held by Comcast of California IX, Inc. ("Comcast").

WHEREAS, the City adopted Resolution No.9359 on February 11, 2003 extending the term of the Franchise until August 30, 2003.

WHEREAS, Comcast executed said Resolution No. 9359 and agreed to continue complying with the Franchise, as amended by the Resolution.

WHEREAS, the City adopted Resolution No.9461 on August 31, 2003 extending the term of the Franchise until December 31, 2003.

WHEREAS, Comcast executed said Resolution No. 9461 and agreed to continue complying with the Franchise, as amended by the Resolution.

WHEREAS, the City adopted Resolution No.9494 on December 31, 2003 extending the term of the Franchise until March 31, 2004.

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WHEREAS, Comcast executed said Resolution No. 9494 and agreed to continue complying with the Franchise, as amended by the Resolution.

WHEREAS, the City and Comcast pursuant to 47 U.S.C. §546(h), are conducting franchise renewal negotiations informally in an attempt to reach a mutually acceptable franchise agreement.

WHEREAS, the City and Comcast are interested in continuing informal discussions and negotiations regarding franchise renewal and desire to further extend the current franchise term from March 31, 2004 to JUNE 30, 2004.

WHEREAS, both the City and Comcast desire to expressly reserve all of their respective rights under state and federal law.

WHEREAS, the City and Comcast can re-enter the formal renewal process pursuant to 47 U.S.C. §546(a-g) at any time upon written notice to the other party.

NOW, THEREFORE, BE IT RESOLVED, by the City Council of the City of Belmont, California hereby resolve as follows:

1. Pursuant to Section 2.3 of the Franchise, the Franchise is hereby amended by extending the term of the Franchise from March 31, 2004 through and including June 30, 2004.
2. Except as specifically modified hereby, the Franchise shall remain in full force and effect.
3. This Resolution shall become effective upon the occurrence of both of the following conditions: (1) The Resolution being passed and adopted by the City Council of the City of Belmont and (2) Comcast's acceptance of this Resolution and the Franchise for the term specified in paragraph (1) above, provided Comcast accepts and agrees to each and every term of this Resolution and the Franchise within fourteen (14) days from the date this Resolution is passed and adopted.

Adopted by the City Council of \_\_\_\_\_, California, this \_\_\_\_ day of March, 2004.

ATTEST:

CITY OF \_\_\_\_\_, CALIFORNIA

By: \_\_\_\_\_

\_\_\_\_\_

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City Clerk

Its: \_\_\_\_\_

**CERTIFICATION**

I, \_\_\_\_\_, City \_\_\_\_\_ of the City of \_\_\_\_\_, California, the custodian of its records, do hereby certify the above is a true and exact copy of a Resolution passed, adopted and approved by the City Council of said City on March \_\_\_\_\_, 2004.

DATED: March \_\_\_\_\_, 2004

By: \_\_\_\_\_

Its: \_\_\_\_\_

**ACCEPTANCE**

Comcast of California IX, Inc., ("Comcast"), hereby acknowledges the City of \_\_\_\_\_, California Resolution No. \_\_\_\_\_ ("Resolution"), attached hereto and referenced in the Resolution and hereby accepts each and every term, provisions and recital of the Resolution and agrees to be bound by the terms and provisions of the Franchise in accordance with the Resolution.

DATED: \_\_\_\_\_, 2004

COMCAST OF CALIFORNIA IX, INC.

By: \_\_\_\_\_

Its: \_\_\_\_\_

SWORN TO BEFORE ME this  
\_\_\_\_ day of \_\_\_\_\_, 2004

\_\_\_\_\_  
NOTARY PUBLIC